NASUCA

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December 16, 1998

VIA HAND-DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

RE: Docket No. 98-170

Dear Secretary:

Enclosed for filing please find an original and 12 copies of the "Reply Comments of the National Association of State Utility Consumer Advocates (NASUCA)" in the above referenced proceeding.

Please receipt-stamp the extra copy of the Reply Comments and return it to me in the enclosed self-addressed stamped envelope. Any questions regarding this matter may be directed to the undersigned.

Respectfully submitted,

Charles A. Acquard
Executive Director

Enclosure

cc: All parties of Record

No. of Copies rec'd 0+11
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FCC NOTICE OF PROPOSED RULEMAKING:
IN THE MATTER OF TRUTH-IN-BILLING AND BILLING FORMAT
CC Docket No. 98-170 (September 17, 1998),
63 F.R. 55077

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FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

The National Association of State Utility Consumer Advocates (NASUCA) appreciates the opportunity to file Reply Comments on the FCC's NOPR, In the Matter of Truth in Billing and Billing Format, CC Docket No.98-170, issued on September 17, 1998, 63 F.R. 55077. We also appreciate the extension of time granted to file these Reply Comments. We continue to believe that this initiative by the FCC, if finalized in the form of an enforceable rule as recommended in our comments, is likely to have a significant impact on preventing customer confusion and halting the spread of unfair trade practices, particularly slamming and cramming.

I. Executive summary.

Our Reply Comments respond to certain themes that appear in a number of comments filed by industry representatives. We also endorse a number of proposals and observations contained in comments by other interested state regulatory and consumer representatives. Most important, we urge the Commission to take prompt action to propose and adopt specific rules that are clearly within its jurisdiction. The comments of consumer interests confirm that there is a significant and widespread level of fraudulent conduct and unfair trade practices by some telecommunications providers. The extent and nature of these practices require the FCC to adopt enforceable standards and practices applicable to those entities that provide interstate telecommunications services. The Commission should resist the calls by industry representatives to adopt unenforceable "guidelines," but rather should adopt specific rules in several areas and work cooperatively with state regulators and consumer advocates with respect to the bill formats and disclosures required for local exchange telephone companies who bill and collect the vast bulk of interstate service charges from retail customers.

II. The comments by consumer representatives clearly demonstrate the need for strong and effective regulation by the FCC.

The comments submitted by consumer representatives support the need for the promulgation of effective rules to prevent fraud and unfair trade practices by some telecommunications providers. Comments submitted by the National Consumers League, Small Business Alliance for Fair Utility Regulation (an organization that represents small business customers), Utility Consumers' Action Network, Bills Project (a division of the Foundation for Taxpayer and Consumer Rights), National Association of Attorneys General (NAAG), and others contained substantial evidence of the prevalence and type of fraudulent and unfair conduct that consumers perceive to be widespread in the telecommunications industry. The FCC should not be deterred by the comments of the industry representatives who seek to downplay the extent and nature of the conduct that sparked this NOPR. The FCC complaints are only the "tip of the iceberg" in this regard. Moreover, many of these horror stories reveal that some telecommunications service providers are engaging in fraudulent conduct that may be criminal in nature.

The FCC clearly has the necessary jurisdiction and statutory authority to regulate interstate telecommunications providers. The FCC is the only regulatory agency with the expertise and resources to regulate these providers. The States are able to regulate the format and disclosures associated with the bill issued by the local exchange providers, but their jurisdiction over the sales practices or conduct of most interstate telecommunications providers is limited[1] and certainly not as comprehensive as the FCC's. Among other federal agencies, the Federal Trade Commission can regulate the conduct of some telecommunications providers to the extent that these providers do not bill by means of the local exchange provider (e.g., bill via credit card) or the providers violate one or more applicable federal consumer statutes (1-900 rule). Therefore the FCC must assume its responsibility under the Telecommunications Act to establish the regulatory framework for meaningful competition to occur. This will require the development of a strong consumer education and consumer protection program so that residential customers and small commercial customers can understand the changes that are occurring and participate in the new competitive markets with some confidence that

[1] The State's jurisdiction is usually reflected in consumer protection statutes implemented by the State Attorney General, but many of these state consumer protection laws exempt public utilities or those entities regulated by more specialized agencies.

outright fraud and unfair conduct will be prevented.

We continue to urge the FCC to take strong regulatory action on a variety of fronts, including this Truth in Billing NOPR, to protect consumers in a developing telecommunications market at the interstate level. This will require the FCC to promulgate rules that will enhance customer education and ability to compare and shop for competitive telecommunications services, prevent unfair conduct, define "safe harbor" procedures and policies, and meaningfully enforce these rules against those who would take advantage of customers rather than compete in a lawful manner.

III. The concerns about the Commission's jurisdiction in this proceeding should not prevent strong and effective action.

Most of the regional Bell Operating Companies (BOCs), as well as independent telephone companies and interexchange providers argued that the FCC does not have jurisdiction over the format of their bills and/or that the FCC should not pursue formal rules because the telecommunications industry has already adopted significant bill changes and the industry should be allowed to implement the Best Practices Guidelines that were recently announced under the auspices of the FCC. See, e.g., comments filed by Ameritech, Bell Atlantic, GTE, US West Communications, Time Warner Telecom, AT&T, Sprint, and Rural Telecommunications Group. Most of these same parties argued that any changes to their bill format might be very costly and that many of them had already made recent changes designed to respond to their perceived desire by customers for a clearer bill format and separation of providers and charges.

NASUCA agrees that it may be difficult for the FCC to promulgate rules that directly regulate the bill format used by local exchange providers, all of whom are regulated by their respective state regulators. However, the FCC should promptly propose rules to address certain activities and disclosures that should be imposed on interstate telecommunications service providers. These regulations should apply to all providers over which the Commission has jurisdiction under Title II of the Telecommunications Act no matter how their customers are billed, either through the provider directly or by means of a billing agent, such as the LEC. Our comments suggested the following regulatory initiatives:

- Interstate service providers subject to the jurisdiction of the FCC should identify their services on customer bills in plain language with words that will convey to a reasonable consumer the nature of the service that has been sold. Non-telecommunications service charges should not be billed to a customer on any bill that includes regulated telecommunications charges. Any service billed to the customer must be described using plain and unambiguous language, in terms that are generally understood by an ordinary customer. No charge may be identified as "miscellaneous" or described by ambiguous terms that may confuse customers or suggest that the service or product is regulated when it is not.

- It is vital that the customer's bill identify the company that sold the customer the service or item in question. It is insufficient and misleading to list the billing agent, an entity which may be unknown to the customer, and who is often unable to provide information about the transaction leading to the charges. The FCC should require all interexchange carriers to list the identity of the person from whom the consumer has legally contracted to buy the service on any bill issued to the customer, as well as a toll free telephone number to handle complaints. This policy does not seek to regulate who provides the complaint handling function on behalf of the provider.

- The FCC should rule that interstate charges cannot be included in any disconnection notice that contains an overdue amount for local exchange services. The FCC should accompany its regulation with a recommendation that the states, which have not already done so, adopt rules prohibiting disconnection of basic local services for nonpayment of any unregulated charges, including interexchange toll charges. We also urge the Commission to adopt a rule that requires interexchange carriers to send separate cancellation notices to their customers for nonpayment or other default as defined in their contracts with customers.

- The FCC should require carriers to disclose the actual average per line universal service and access charges on the same page as the customer's individual statement of universal service and access charges. Additionally, the FCC should require companies to disclose such charges with certain words and phrases that the FCC determines to be factually correct or not deceptive. We endorse the recommendations of the Federal-State Joint Board on Universal Service issued on November 25, 1998 (Second Recommended Decision, CC docket No. 96-45) concerning this issue: "We therefore recommend that the Commission take decisive action to ensure that consumers are not misled as to the nature of charges on bills identified as recovery universal service contributions." ¶70

- The interstate telecommunications companies should issue a "Terms of Service" document to the customer within 3 days of receiving the customer's authorization to select the provider for any telecommunications service. This document should contain a clear and conspicuous disclosure of the material terms and conditions of the agreement with the customer.

- We strongly endorse the comments of the Utility Consumers' Action Network (UCAN) which urged the FCC to develop a unit pricing disclosure for telephone charges. The service provider should disclose (and provide to the billing entity) the average cents per minute paid by the customer for any toll service that appears on the customer's monthly bill (or any other service that is sold to the customer by means of a timed usage factor). This will require a calculation of the total dollars billed to the customer for toll services divided by the minutes billed to the customer for their toll calls by each provider for that billing period. This calculation should include any additional fees or charges imposed by the provider, including any separate fees listed for access charges or universal service fees. This will result in a cents per minute charge that customers can compare among telephone companies, thus enhancing the development of a competitive market. This calculation will appear on each provider's bill page included with the LEC bill as well as any bill issued by a provider directly to a customer. This type of disclosure should be modeled on the Annual Percentage Rate disclosure and calculation required by the Truth in Lending Act.

- The FCC should prohibit a telephone provider from engaging in unfair trade practices in general and specifically should prohibit negative option billing or negative enrollment of telecommunications services.

While the FCC may not have direct jurisdiction over the bill format and disclosures included on bills issued by local exchange providers, state regulators certainly do. We continue to urge the FCC to sponsor a state-federal forum to explore the development of guidelines and policies which will benefit consumers in the development of improved bill formats and disclosure policies. The comments of NAAG were especially helpful in this regard. Like NAAG, many of our proposals find their roots in consumer protection programs and policies applicable to other competitive industries, in particular the Truth in

Lending Act.

IV. The FCC should act promptly to assign a unique identifier to each telecommunications provider to close loopholes in existing consumer protection programs and policies.

A number of commenters pointed out that resellers use their facilities provider's Carrier Identification Code, thus making it impossible for local billing agents to detect a change in the customer's primary carrier (enabling the so-called "soft slam") and also making any local disclosure rule about status changes in the customer's account impossible to implement. The FCC should take any steps necessary to immediately correct this impediment to the implementation of existing consumer protection rules.

V. A number of telecommunications providers have not communicated the complete story with respect to their current practices in identifying regulated and unregulated charges on customer bills or in disconnection notices.

Most of the local exchange carriers do identify 1-900 calls with a separate symbol or on a separate section of the bill. However, other unregulated telecommunications services are typically not separated or identified in any way as different from regulated charges. The largest category of unregulated charges, interstate and interexchange toll charges, are usually not identified as "unregulated" by LECs. Finally, the key to understanding the actual impact of including both regulated and unregulated charges on customer bills occurs with the issuance of a disconnection notice. In only a few states (Pennsylvania is a notable example), the state-regulated charges are identified as the amount that is overdue and that must be paid to avoid disconnection of local exchange service. In most states, unregulated charges are included in the amount overdue on the disconnection notice for local basic service. For example, in Maine, Vermont and New Hampshire, the Bell Atlantic disconnection notice includes a single overdue amount and the customer is told to pay or make a payment arrangement on this amount to avoid disconnection. Even in states that require some additional disclosure, the notice is confusing and designed to give the impression that the customer must make arrangements or pay the entire overdue amount to avoid further action. We attach a disconnection notice format used by US West Communications in Colorado to illustrate our concerns. The total amount due is prominently displayed. The overdue amount is broken down into several categories and the customer is told that "Those services subject to disconnection are shown in Bold Print." This use of bold print is often not visible to a reasonable consumer. Furthermore, the notice states, "If you have not mailed the full amount owed, please call us immediately at the customer service number listed above to arrange payment of your account." The entire presentation is intended to suggest that the customer must pay the entire overdue amount by calling US West to avoid disconnection of service. At the very least, this notice is confusing.

We urge the FCC to further investigate the actual practices in the identification of unregulated charges on customer bills and whether these charges appear on a customer's disconnection notice. The importance of continuing to bill and collect unregulated charges as if they are part of the traditional phone service bill (which most customers continue to believe is regulated) was revealed by the strong opposition by the interstate carriers to the FCC proposal to identify "deniable" and "non-deniable" charges.

The FCC should respond to these comments and adopt strong disclosure policies with respect to unregulated charges billed by those subject to its direct jurisdiction. The FCC should require by rule that these providers identify that their charges are unregulated on a customer's bill and should prohibit providers from including any unregulated charges on a customer's disconnection notice for local basic service. Those who bill for unregulated services on a telephone bill that contains regulated services should collect for unpaid charges in the same manner as other competitive businesses. This will create a level playing field for all providers who bill for unregulated services. Of course, providers should be able to cancel their contract with a nonpaying customer. This notice should be issued separately from any disconnection notice.

VI. The FCC should convene a collaborative effort with state regulators, consumer interests, and industry representatives to develop and implement a

national consumer education program.

A number of commenters encouraged the FCC to develop and implement a consumer education program and correctly noted that the lack of consumer education about telecommunications has contributed to the development of fraud and misleading sales practices. We agree with the comments of the Florida Public Service Commission in this regard.

VII. Conclusion.

The FCC is to be commended for initiating this effort to address the issue of customer bill format and disclosures. We urge the Commission to promptly analyze the comments it has received and initiate a rulemaking to address the specific issues we have identified in our comments.

Respectfully submitted,

Charles A. Acquard, Esq.
Executive Director
National Association of State Utility Consumer Advocates
1133 15th Street, NW, Suite 550
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Notice Date: Mmm dd, yyyy
Account Number: 999-X99-9999X 999X 99
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Page 99999

USWEST COMMUNICATIONS

DISCONNECT NOTICE

Customer Service Number
9 999 999-9999 - No Charge

*****Please disregard this notice, if you have already paid.*****

Our records show a total past due amount of **$999,999.99** on your account. To avoid a temporary disconnection of your local or long distance service, **Full Payment** must be mailed immediately to reach us by **Mmm dd**. A restoral charge of $999.99 per xxxxxxx and a security deposit may apply to reestablish service.

Below is a breakdown of your past due amount. Those services subject to disconnection are shown in **Bold Print**. If you do not contact Customer Services to tell us how money should be applied, your payment will be applied first to the past due balance of U S WEST Regulated service to ensure continued dial tone. The remaining amount of your payment will be applied to the balances of your other services.

XxXxXxXxXxXxXxXxXxXxXxXxXxXxXx	**$999,999.99**	**XxXxXxXxXxXxXxXxXxXxXxXxXxXxXx**	**$999,999.99**
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Total Past Due **$999,999.99**

You are a valued customer of U S WEST Communications. We appreciate your business. We also understand sometimes customers forget to make a timely payment. If you have not mailed the full amount owed, please call us **immediately** at the customer service number listed above to arrange payment of your account. Automatic payment is available through your checking or savings account. We also accept VISA, MASTERCARD and DISCOVER.

Thank you for your prompt attention.

U S WEST Credit Management Center Hours are:
Monday-Friday 7:00 AM to 7:00 PM